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TELECONFERENCE MINUTES OCTOBER 11, 2006

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 12:05 p.m., on Wednesday, October 11, 2006, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Robin Shropshire

Board Members Present via Telephone: Chairman Joseph Russell, Don Marble, Bill Rossbach, Gayle Skunkcap, Kim Lacey, Heidi Kaiser and Robin Shropshire

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Cheryl Romsa, Cheryl Romsa Court Reporting

Department Personnel Present: Richard Oppen, Director; Tom Livers, Deputy Director; Lisa Peterson, Director's Office; John North, Chief Legal Counsel; David Rusoff, Legal; Don Vidrine, Air Resources Management Bureau (ARMB), Permitting & Compliance Division (PCD); Charles Homer, ARMB, PCD; Debbie Skibicki, ARMB, PCD; David Klemp, ARMB, PCD; Jeff Blend, Planning, Prevention & Assistance Division.

Interested Persons Present (in person or via telephone): Steve Wade, BKBH; Mark Lambrecht, PPL Montana; Jim Parker, PPL Montana; Leo Berry, GWP; Tim Gregori, Southern Montana Electric; Joe Lierow, Bison Engineering; Candace Payne, Southern Montana Electric; Dave Kelsey, Southern Montana Electric; Brandon Wittman, Yellowstone Valley Electric; Jeff Chaffee, Bison Engineering.

I In the matter of the amendment of ARM 17.8.740 and 17.8.767 and the adoption of New Rules I and II pertaining to control of mercury emissions from facilities that combust coal to generate electricity for sale and adoption of the cap and trade provisions of the federal Clean Air Mercury Rule.

Mr. Livers recommended a motion to adopt the rule as distributed and that further discussion could then continue; that there be some limited public comment, due to the recent changes in the proposed rule; and that any new changes to the proposed rule be dealt with individually in nested motions. He indicated that some of the changes might also necessitate changes to the responses to comments and to the 521/311 analyses, and suggested a very brief subsequent teleconference on Monday for final approval.

Chairman Russell called for a motion to adopt the rule as proposed. Ms. Kaiser so MOVED. Ms. Lacey SECONDED the motion. The motion was amended to be contingent upon the Board's approval of the entire rule package at the teleconference on Monday.

Mr. North identified a housekeeping amendment on page 3, subsection (3). He suggested that item (c) become subsection (4), that subsection (4) become subsection (5), etc. Mr. Rossbach MOVED to make the amendment. Ms. Lacey SECONDED the motion. The motion CARRIED with a unanimous VOTE.

Mr. Rossbach suggested there was concern regarding the BACT analysis requirement, that it might allow the DEQ to require a different boiler technology after the plant was built. He MOVED to add language at section (1)(c), (2)(iv), and at (2)(b), (iv). Ms. Kaiser SECONDED the motion. Mr. Livers clarified that the language would be added to section (1)(c) and immediately after section (1)(b) at (iv). Further discussion took place. Chairman Russell called for a VOTE and the motion CARRIED unanimously.

Mr. Gregori asked that the Board consider adding the language to sections (8) and (9) also.

Mr. Berry requested that the Board clarify in the responses to comments that the boiler technology to be used is part of the application process and is not selected by the agency or the Board.

Mr. Livers identified where the additional language should be added in sections (8) and (9), as Mr. Gregori had suggested. Further discussion took place regarding placement of the language. Mr. Rossbach MOVED for the addition of the language in the two newly identified places. Ms. Lacey SECONDED the motion.

Chairman Russell called for public comment on this issue. Mr. Gregori said the suggested placement creates more confusion than it resolves. Mr. Berry commented that the language is not needed, and recommended the Board withdraw the amendment.

Chairman Russell called for a VOTE to place the additional language in the two

newly identified places. The motion CARRIED unanimously.

Discussion took place regarding possible language to address newly proposed plants. The Board decided to not deal with this issue at this time.

Discussion took place regarding AELs after 2018. Ms. Shropshire MOVED that the numbers and the cap-and-trade portion of the rule be identical for all types of coal in Montana, for new non-existing facilities. Mr. Skunkcap SECONDED the motion. Further discussion took place.

Chairman Russell called for public comment. Mr. Berry spoke against the motion. The motion FAILED with a 4-3 VOTE.

Chairman Russell called for public comment on the original motion to adopt the rule, with the nested amendments. Mr. Lambrecht commented regarding the allowances, BACT review, and the Economic Impact Statement. Mr. Kelsey spoke in favor of the language additions.

Chairman Russell confirmed Ms. Kaiser and Ms. Lacey's concurrence with the amendments made to the original motion and called for a VOTE on the original motion with amendments. The motion CARRIED 5-2.

II. General Public Comment

Chairman Russell called for general public comment. There was no response.

The Board decided the subsequent teleconference on regarding final action on the mercury rules would take place Monday, October 16, 2006, at Noon.

A brief discussion took place regarding the October 25, 2006, Gallatin ORW rule hearing.

III. Adjournment

Mr. Skunkcap MOVED to adjourn. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.

The meeting adjourned at 2:22 p.m.

Board of Environmental Review October 11, 2006, teleconference minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE